

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
The Application by SBC Communications)	
Inc. for Authorization Under Section 271)	WC DOCKET NO. 02-306
of the Communications Act to Provide)	
In-Region Interlata Service)	
In the State of California)	

**COMMENTS OF
THE BROADBAND INSTITUTE OF CALIFORNIA**

October 8, 2002

I. Introduction

The BroadBand Institute of California (BBIC) welcomes the opportunity to comment on the application of SBC for authorization pursuant to § 271 of the Communications Act to provide in-region interLATA service in California.

The BroadBand Institute of California (BBIC) is a research, applied policy and educational forum for the identification of impacts, as well as the exploration, development and implementation of practical policies and best practices to address the broadband technology needs of Californians.

A majority of the California Public Utilities Commission (CPUC) has found that SBC-Pacific Bell has met the requirements of § 252 and the requirements of § 271 of the Communications Act. As a consequence, SBC-Pacific Bell should therefore gain FCC approval to enter the long distance market in California.

II. SBC-Pacific Bell Has Complied With the Requirements of §§ 252 and 271

A majority of the California Public Utilities Commission (CPUC) has found that SBC-Pacific Bell has met the requirements of § 252 and the requirements of § 271 of the Communications Act. The CPUC found that SBC-Pacific Bell demonstrated the existence of facilities based competition in the California market as required by § 252. In addition, the CPUC found that SBC-Pacific Bell complied with 12 of the criteria under § 271. The CPUC stated it could not verify SBC-Pacific Bell's compliance with the number portability criteria. However, it is questionable whether there is any federal precedent in the twenty-one prior § 271 approvals requiring compliance in the manner the CPUC seeks to impose.¹ Finally, the CPUC's finding of SBC-Pacific Bell non-compliance with the federal resale requirement is questionable for the same reason.

III. Approval of SBC-Pacific Bell's Application is in the Public Interest

First, the local market is demonstrably competitive as contemplated by §§ 252 and 271. The local market is more competitive than other state markets in which incumbent local exchange carrier entry into long distance has been approved. With some 100 operational CLECs in California serving roughly 13% of the state's local access lines, SBC-Pacific Bell is currently facing more local competition in California than any other incumbent local exchange carrier has when it received FCC interLATA approval.²

¹ For instance, see *In the Matter of Application by Verizon New Jersey Inc., et. al for Authorization To Provide In-Region, InterLATA Services in New Jersey* (WC Docket No. 02-67) 17 FCC Rcd 12275 (2002).

² SBC Files for Cal. 271 Despite Major Questions on PUC Support, FCC Report, October 4, 2002.

Second, SBC-Pacific Bell has demonstrated its continuing intent facilitate competition in its local market. It has made demonstrable efforts to comply with a growing, shifting set of state imposed conditions. In the last four years, SBC Pacific Bell has complied with more than 250 conditions set by the CPUC to ensure that California's telecommunication market is open to competitors. At present, SBC Pacific Bell's wholesale operation is processing in excess of 12,000 orders per day for more than 80 competing companies.³

Third, SBC-Pacific Bell's entry into the long distance market will benefit Californians. SBC-Pacific Bell entry into the long distance market will enhance competition. For instance, the Telecommunications Research and Action Center (TRAC) estimates that California's consumers could realize savings of more than \$800 million a year in local and long distance calling once the market opens.⁴

IV. The Imposition of the State's §709.2 Requirements Are Ill-Advised

The CPUC's belated implementation of the §709.2 requirements is misplaced. First it is not clear that the interpretation the CPUC has adopted is consistent with legislative intent. Indeed, California State Senator James Costa (D-Fresno), the author of § 709.2 has publicly stated that the 1994 state law was never intended to supersede the § 271 and preclude Pacific Bell's entry into the interLATA long distance market.⁵ Second,

³ Cal. PUC Conditionally Supports SBC Long Distance Entry, Long-Distance Competition Report, August 5, 2002.

⁴ SBC's Entry into Long-Distance Will Benefit California; Company Filing Demonstrates Compliance with All 14 Checklist Items, Business Wire, August 12, 2002.

⁵ SBC Files for Cal. 271 Despite Major Questions on PUC Support, FCC Report, October 4, 2002.

to the extent that the state's efforts under § 709.2 substantially frustrate federal regulation of interLATA market entry and competition, they are likely preempted under the "impossibility exception."⁶ Third, it is not at all clear how the CPUC could conclude that the last three requirements of § 709.2 are not met. The underlying intent of the imposition of fourteen checklist criteria is to ensure against anticompetitive behavior and cross-subsidization in the interLATA long distance market by imposing non-discrimination, interconnection, pricing and unbundling requirements on the incumbent local exchange carrier and mandating their compliance therewith as a quid pro quo for entry into long distance. Compliance with § 271 constitutes demonstrable proof that the carrier will not use anticompetitive behavior and improper cross-subsidies to harm the overall competitiveness of the market.

V. Conclusion

For the above stated reasons, the BBIC encourages the Commission to act quickly to approve the application of SBC-Pacific Bell. Such approval is consistent with the public interest. A review of the competitive checklist, which embodies the critical elements of market entry under the Act, will disclose that barriers to competitive entry into California's local exchange market have been removed and the market is open to competition. Further, it will confirm that SBC-Pacific Bell entry into California's long distance market will benefit consumers and competition as the

⁶ See *California v. FCC*, 39 F.3d 919 (9th Cir. 1994) Cert. Denied April 3, 1995. Affirming that state regulation of intrastate communication may be preempted where it is found to negate lawful federal authority over interstate communication because the services are jurisdictionally mixed.

relevant local exchange market is open to competition consistent with the competitive checklist.

Respectfully submitted,

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